



**MINUTES  
SCOTTSDALE PLANNING COMMISSION  
KIVA – CITY HALL  
3939 N. DRINKWATER BOULEVARD  
JANUARY 22, 2003**

**PRESENT:** David Gulino, Chairman  
Charles Lotzar, Vice Chairman  
James Heitel, Commissioner  
Kay Henry, Commissioner  
Tony Nelssen, Commissioner  
Kevin Osterman, Commissioner  
Steve Steinberg, Commissioner

**STAFF:** Pat Boomsma  
Tim Curtis  
Pete Deeley  
Donna Bronski  
Steve Lehmann  
Dave Meinhart  
Gary Meyer  
Bill Peifer  
Kevin Sonoda  
Jerry Stabley  
Cheryl Sumners  
Bill Verschuren  
Kira Wauwie  
Randy Grant

**CALL TO ORDER**

The regular meeting of the Scottsdale Planning Commission was called to order by Chairman Gulino at 5:05 p.m.

**ROLL CALL**

A formal roll call confirmed members present as stated above.

**OPENING STATEMENT**

**COMMISSIONER OSTERMAN** read the opening statement which describes the role of the Planning Commission and the procedures used in conducting this meeting.

**ELECTION OF CHAIRMAN AND VICE CHAIRMAN**

**VICE CHAIRMAN LOTZAR NOMINATED DAVID GULINO TO CONTINUE SERVING AS CHAIRMAN OF THE PLANNING COMMISSION. SECOND BY COMMISSIONER HENRY.**

**THE MOTION PASSED BY A VOTE OF SEVEN (7) TO ZERO (0).**

**COMMISSIONER OSTERMAN NOMINATED CHARLES LOTZAR TO CONTINUE SERVING AS VICE CHAIRMAN OF THE PLANNING COMMISSION. SECOND BY COMMISSIONER HENRY.**

**THE MOTION PASSED BY A VOTE OF SEVEN (7) TO ZERO (0).**

**MINUTES APPROVAL**

1. December 11, 2002
2. December 18, 2002

**CHAIRMAN GULINO** stated Commissioner Henry has provided corrections to the December 11, 2002 minutes so they will submit those corrections and approved the revised minutes at the next meeting.

**COMMISSIONER NELSEN** request a correction to the December 11, 2002 minutes. On page 7, third sentence that reads: "He remarked they are wasting time". Should read: "He remarked the Commission would just be wasting time by delaying this process with a continuance".

**COMMISSIONER HENRY** stated she would like the public record to reflect that Commissioner Osterman was not at the meeting but the minutes show he seconded the motion under continuances. **VICE CHAIRMAN LOTZAR** stated the record should reflect that he was the appropriate person on Page 3 under continuances.

**COMMISSIONER NELSEN** stated on Page 14, middle of the last paragraph it states: "His point is the City has the right to abandon their interest in the GLO easement but the Federal government states there are still private rights on those GLO easements. Should read: "He presented to staff a document from Congressman Hayworth's office basically stating that Arizona State law supports both a private access right and a public access right."

**COMMISSIONER HENRY** reported she did not receive a copy of the December 18<sup>th</sup> meeting minutes.

**CHAIRMAN GULINO** stated they would defer approval of the December 18, 2002 meeting minutes to allow Commissioner Henry a chance to review them.

**CONTINUANCES**

3. 16-UP-1997#2 (Danny's Car Wash - Shea) request by Deutsch Associates, applicant, Pinnacle & Pima LLC, owner for amend an existing use permit for an automated carwash on a 2.5+/- acre parcel located at 7373 E Shea Boulevard with Central Business District (C-2) zoning. Staff contact person is Bill Verschuren, 480-312-7734. **Continued to February 11, 2003.**
4. 17-UP-1997#2 (Danny's Car Wash - Shea) request by Deutsch Associates, applicant, Pinnacle & Pima LLC, owner for amend an existing use permit for a service station on a 2.5+/- acre parcel located at 7373 E Shea Boulevard with Central Business District (C-2) zoning. Staff contact person is Bill Verschuren, 480-312-7734. **Continued to February 11, 2003.**

(CHAIRMAN GULINO DECLARED A CONFLICT ON CASES 16-UP-1997#2 AND 17-UP-1997#2 AND DID NOT PARTICIPATE IN THE VOTE.)

**COMMISSIONER HEITEL MOVED TO CONTINUE CASES 16-UP-1997#2 AND 17-UP-1997#2 TO THE FEBRUARY 11, 2003 PLANNING COMMISSION MEETING. SECOND BY COMMISSIONER OSTERMAN.**

**THE MOTION PASSED BY A VOTE OF SIX (6) TO ZERO (0) WITH CHAIRMAN GULINO ABSTAINING.**

**EXPEDITED AGENDA**

5. 25-UP-2002 (City of Scottsdale Well No. 123) request by Stanley Consultants Inc., applicant, City of Scottsdale, owner, for a conditional use permit for a city well (municipal use) on a .17 +/- acre parcel located at the northeast corner of Scottsdale Road and East Princess Boulevard with Open Space (OS) zoning.

**MR. VERSCHUREN** presented this case as per the project coordination packet. Staff recommends approval, subject to the attached stipulations.

**COMMISSIONER STEINBERG** stated the report states under Policy implications: "The front 27 feet of the 60-foot wide well enclosure encroaches into the 100-foot scenic corridor along Scottsdale Road". He inquired what will happen when they widen the Scottsdale Road portion between Frank Lloyd Wright and Pinnacle Peak will that encroachment get worse. Mr. Verschuren replied the 100 yard set back starts at the right-of-way line so the right-of-way they are expanding in already exists.

Commissioner Steinberg inquired if there was any proposed use for immediately around the proposed well site. Mr. Verschuren stated the site is an open site. Mr. Jones stated there are no plans or no leases being talked about on the State Land parcel.

**COMMISSIONER HENRY** stated she would like to clarify that the owner of the well site is the City of Scottsdale. Mr. Verschuren replied in the affirmative.

**APPROVED**

**CHAIRMAN GULINO** stated he would like to include in the packet to the DR Board that they pay attention to the height of the equipment in the well relative to the effectiveness of the wall to screen it.

**VICE CHAIRMAN LOTZAR MOVED TO FORWARD CASE 25-UP-2002 TO THE CITY COUNCIL WITH A RECOMMENDATION FOR APPROVAL INDICATING IT DOES MEET ALL OF THE USE PERMIT CRITERIA. SECOND BY COMMISSIONER HEITEL.**

**THE MOTION PASSED BY A VOTE OF SEVEN (7) TO ZERO (0).**

9-AB-2002 (Boulder Mountain Estates/Mills Property) request by Maracay Homes Arizona LLC, applicant, Multiple Owners, owner, to abandon certain portions of the roadway easements located along 116th and 118th Street alignments and Ranch Gate Road alignment.

(VICE CHAIRMAN LOTZAR DECLARED A CONFLICT ON CASE 9-AB-2002 AND DID NOT PARTICIPATE IN THE DISCUSSION OR THE VOTE.)

**MS. SUMNERS** presented this case as per the project coordination packet. Staff recommends approval, subject to the requirements for street dedications along 118<sup>th</sup> Street and small portion along Ranch Gate Road as well as a public trail easement along the east side of 118<sup>th</sup> Street.

**COMMISSIONER HEITEL** inquired if the DR Board expanded that trail easement to 25 feet.

**STEVEN VOSS**, 7502 E. Main, stated it was expanded to 25 feet but only to be located on the east side.

**COMMISSIONER HEITEL MOVED TO FORWARD CASE 9-AB-2002 TO THE CITY COUNCIL WITH A RECOMMENDATION FOR APPROVAL. SECOND BY COMMISSIONER HENRY.**

**THE MOTION PASSED BY A VOTE OF SIX (6) TO ZERO (0) WITH VICE CHAIRMAN LOTZAR ABSTAINING.**

10-AB-2002 (Health South Abandonment) request by Shane & Karen Mustoe, applicant, Multiple Owners, owner, to abandon 50 feet of public right-of-way east of 96th Street, north of Shea Blvd.

**MR. DEELEY** presented this case as per the project coordination packet. Staff recommends approval, subject to the following stipulations:

- A drainage easement is reserved over, under and across the west 15 feet of the subject 50 feet right-of-way.
- The property owners will be responsible to remove the valley gutter and replace with a rolled curb to eliminate the appearance of a public street.

**COMMISSIONER STEINBERG** inquired if there were any drainage issues. Mr. Deeley stated there is drainage to the west of the actual right-of-way there is a 20-foot drainage easement and so the 15-foot would be the portion that you would see out of the paved area.

**CHAIRMAN GULINO** inquired if it was the property owner's responsibility to remove the existing curb and replace the roll curb. Mr. Deeley replied in the affirmative.

**COMMISSIONER STEINBERG MOVED TO FORWARD CASE 10-AB-2002 TO THE CITY COUNCIL WITH A RECOMMENDATION FOR APPROVAL, SUBJECT TO THE STIPULATIONS REFERRED TO IN OPTION A OF THE STAFF REPORT. SECOND BY COMMISSIONER HENRY.**

**THE MOTION PASSED BY A VOTE OF SEVEN (7) TO ZERO (0).**

2-MP-2002#2 (Chaparral Park Expansion) request by City of Scottsdale Capital Project Management, applicant, City of Scottsdale, owner, for approval of a Municipal Use Master Site Plan for the Chaparral Park extension, including modified off-leash area and 2 new lighted sports fields. The subject property is 20+/- acres located on the north and south sides of McDonald Drive, east of Hayden Road, with Open Space (O-S) zoning.

**MR. MEYERS** presented this case as per the project coordination packet. Staff recommends approval, subject to the attached stipulations.

Mr. Meyers stated they did send an e-mail to Commissioner Lotzar that reviewed the policies regarding field allocation and scheduling of sports teams.

**MR. LEHMANN**, Senior Recreation Coordinator, presented information regarding the use of the sport fields at Chaparral Park during various seasons. He also presented information regarding the number of fields available for youth sports. He discussed how the fields could be used for little league and adult softball.

**VICE CHAIRMAN LOTZAR** thanked the folks at the Parks Department for their follow-up and detail. He requested the additional information Mr. Meyers referred to in the e-mail be included in the minutes of this meeting. The reason is because it clears up a number of issues of concerns with respect to use and restrictions on use with respect to fields. He stated he felt it was very encouraging that the city has taken a very active role in dealing with the field use issue and taken a leadership role in dealing with the school facilities. One of the great things that have come out this is the ability to have dialogue between the two separate governments. One government is the city and the other separate government being the School District. One of the great roles the city can take on in assisting youth sports is in the maintenance of those fields and scheduling of those fields.

(LISTED BELOW IS THE E-MAIL DATED JANUARY 17, 2002, VICE CHAIRMAN LOTZAR REQUESTED BE INCLUDED AS PART OF THE MINUTES.)

As a follow-up to the December 11<sup>th</sup> Planning Commission meeting, we are providing additional information regarding the use of sport fields at Chaparral

**APPROVED**

Park and throughout the city. We met with Commissioner Lotzar on January 8<sup>th</sup> to review our policies regarding field allocation and scheduling of sport teams. The attached information provides more documentation regarding sport field usage and sport field allocations. We also included xeriscape information from our Water Department in order to clarify the purpose and proposed use of the xeriscape demonstration area.

If you have any questions prior to the commission meeting, feel free to contact any of us at 480 312-2722. We look forward to seeing you at the Commission meeting on January 22<sup>nd</sup>.

### **Background on Little League Use of Existing Chaparral Ballfields**

The four ballfields that are currently on the north end of Chaparral Park, located on Hayden, north of Jackrabbit Road were completed in 1974. At this time the "East Scottsdale Little League" was involved with the planning and development of those fields. In 1972, Paul T. Davis, then the Assistant City Manager for the City of Scottsdale, wrote a letter to Hallcraft Homes committing to "priority use of these fields [Chaparral Park] to the large little league organization working out of the Mohave School Area".

That commitment is still kept today. The City has since gone back and upgraded the lighting and will do so as needed in the future. Little League continues to have priority use during the Little League season on these fields. They do not have "exclusive use", but the East Scottsdale Little League and the outgrowth of that league, the McCormick Ranch Little League, continue to have priority usage of this facility during the little league season.

### **Xeriscape Demonstration Garden at Chaparral Park**

The City of Scottsdale entered the No-Per-Capita Conservation Program by signing a stipulated agreement with the Arizona Department of Water Resources. One of the water conservation measures of the Program is an educational standard. The Xeriscape demonstration garden offers a unique educational opportunity to present information on using Xeriscape principles to create water-conserving landscapes. Xeriscape landscapes enhance the environment even through naturally occurring dry periods.

Urban landscapes are closely tied to our water supplies. High-water-use landscapes account for 50-80% of residential water use.

In a survey that was conducted during 2002, citizens demonstrated their support by responding to a survey in which 90% of respondents reported that they would value viewing landscape specimen plantings to help them make informed landscape choices.

The Chaparral Park site is outstanding in that it meets the guidelines for demonstration gardens and has the added advantage of being adjacent to a water treatment facility with funding associated to the landscaping of that facility.

In addition, the landscape architect firm engaged for renovation of the park, Ten Eyck Landscape Architects, was recently recognized with a Valley Forward Crescordia Award for environmental excellence for their remarkable work at the Desert Botanical Garden.

There are other environmental benefits associated with Xeriscape landscaping. It benefits homeowners by reducing water bills and maintenance costs through the use of beautiful drought-enduring landscapes. It benefits the local community by enhancing regional identity.

Chaparral Park presents a unique opportunity to demonstrate the many interrelated benefits of Xeriscape and add a valuable educational element to the park experience.

**COMMISSIONER OSTERMAN** stated this has come a long way since April.

(CHAIRMAN GULINO OPENED PUBLIC TESTIMONY.)

**SCOTT MILLER**, 5814 N. 81<sup>st</sup> Street, stated he lives adjacent to the subject property line. He further stated don't let the number of residents that happen to speak tonight make you think their concerns have dwindled. There are still the same issues but they are tired of saying the same things. He expressed his concerns regarding the drainage pond that is currently on the property. He reported he is concerned about the number of dogs that continue to run free in the unfenced area. There needs to be more strength in reinforcing the rules. He asked if there was a phone number to call to report these incidents. He reported the group that was assembled for this project has done an outstanding job and he felt this case should be moved forward.

**JOHN BARNES**, 7737 N. Via De La Montana, stated he was here on behalf of youth sports. He further stated he fully supports this plan. They have done a great job in trying to address everyone's needs. He reported he attended the joint meeting between the city and the schools and was very excited about cooperation between the two groups because they all seem to want to work together to make all of the fields as nice as possible.

**BILL SHOWKEIR**, 5868 N. 81<sup>st</sup> Street, stated he recognizes the popularity and desirability of the off leash area as an amenity to the city, but it is not desirable to the homeowners in the area because it is noisy, smelly and is currently not kept up very well. He further stated he would request this area be located as far away from the residences as possible. He noted a lot of the questions he has about the operation are based on the current site. He further reported there is a high number of people that let their dogs run free outside of the off leash area and he cannot walk his dog outside of his house. He reported currently the site is locked up at night but once the golf facility goes away what would keep it from becoming a 24-hour facility. He further reported as early as 6:00 AM there are 10 to 15 cars there in the morning and people are allowing their dogs to run in the open fields. He inquired if the City would be providing any monitoring. He commented he is in favor of the ballfields. He inquired where the public trails would be.

(CHAIRMAN GULINO CLOSED PUBLIC TESTIMONY.)

**MR. MEYERS** stated loose dogs are an ordinance violation and would be enforced by the Police Department. He further stated once they are in the new facility there will be more opportunity to maintain the facility. He reported there is a security service that locks up at 10:00 PM. He reviewed the access for the site.

**VICE CHAIRMAN LOTZAR** inquired when the renovations to the existing park facility would come on line. Mr. Meyers replied they should be completed by the fall of 2005.

**COMMISSIONER HEITEL** stated regarding the issue of the dogs being off leash in the ballfield he felt the city should take a more proactive approach rather than telling them to call the police. He further stated they might need to educate the dog owners regarding this issue.

**COMMISSIONER HENRY** inquired if the off leash area is currently fenced and they enter through a gate. Mr. Meyers replied it is fenced and they enter through a double gated area. Commissioner Henry inquired if there was any signage currently at the site. Mr. Meyers replied in the affirmative. Commissioner Henry stated she would agree the city should be proactive and provide better signage and provide education for the dog owners. She further stated calling the police every time there is a loose dog will not work. This issue needs to be looked at.

**COMMISSIONER NELSEN** stated he hopes this moves forward to the City Council with the greatest possible speed. He further stated he felt this is a very workable plan. He noted he felt once everything is in place it should be easier to monitor

**COMMISSIONER NELSEN MOVED TO FORWARD CASE 2-MP-2002#2 TO THE CITY COUNCIL WITH A RECOMMENDATION FOR APPROVAL. SECOND BY COMMISSIONER OSTERMAN.**

**THE MOTION PASSED BY A VOTE OF SEVEN (7) TO ZERO (0).**

**VICE CHAIRMAN LOTZAR** stated he thought that the issues regarding and signage and rules for the off leash area are things that have been talked about and are in process. He further stated he would appreciate if they could put signs around the ballfields indicating you should not have your dog at the ballfields would be nice.

Vice Chair Lotzar stated Dick Tooker recently passed away and he served as a Board of Director on the McCormick Ranch Little and he was recognized for doing a lot for youth sports. He further stated as they revisit these fields he thought it would be nice to have a memorial acknowledging his past service because he did a lot for the city in a quiet way.

21-ZN-2002 (The Legends at Toscana) request by Legend Development, applicant, Collin Thorstenson, owner, to rezone from Single Family Residential (R1-35) to Single Family Residential, Planned Residential District (R1-7, PRD) including amended development standards on a 10 +/- acre parcel located at 12855 N 94th Street.

**APPROVED**

**MR. CURTIS** presented this case as per the project coordination packet. Staff recommends approval, subject to the attached stipulations.

**COMMISSIONER NELSEN** commented on the suburban use as opposed to rural use, which would go along with equestrian use. He further commented there is not that distinction that suburban use is inappropriate for equestrian use.

**COMMISSIONER HENRY** inquired if the current owner of the Buffalo Ranch is selling that property because there are sales pending so he is getting out of the ranch business. Mr. Curtis replied that is his understanding. He stated he is not sure if he is getting out of the business but it would not be at this location.

**COMMISSIONER STEINBERG** inquired what are some of the options they are exploring for acquiring the northern portion of the site. Mr. Curtis reported the Engineering Department and Capital Improvements Department are dealing with the drainage issues and looking at different ways to solve this. Commissioner Steinberg inquired how long that process has been going on and when they expect to conclude. Dave Meinhart replied they are trying to wrap up a final recommendation on the solution for the storm water retention basin in the next few months. Commissioner Steinberg inquired if staff felt Phase 2 would be detrimental to solving the drainage problem. Mr. Meinhart stated staff felt Phase 2 would support the flood control project. Mr. Grant stated the regional storm water drainage solution could occur with Phase 2.

**COMMISSIONER HEITEL** stated they are being requested to approve a plat to increase the density on a phase of the property that the city may come back after they have increased the density on and have to repurchase it with higher density at an increased value from the applicant. Ms. Boomsma replied if they have to condemn the property it would be at the value that the Court determines whether or not it is rezoned it will be based on the highest and best use. She stated if the question he is leading toward is if they are increasing the cost to the city that is not a good consideration to make because that is not what the court will look at when making a decision. She further stated she would strongly recommend that the commission members reasons for approving or disapproving this particular case not be based on the city's desire to purchase it in the future because that will defeat the purpose.

**COMMISSIONER NELSEN** inquired how many properties could be developed under the existing zoning. Mr. Curtis stated nine lots could be developed with the existing zoning. Commissioner Nelsen inquired even with the drainage. Mr. Curtis replied that would have to be taken into consideration with the nine lots the drainage easements could be on certain lots in the front and rear yards.

**CHAIRMAN GULINO** stated they run the risk of a conflict of interest when they start considering the fact that the city wants to acquire the land as drainage. The Commission needs to focus their consideration strictly on the land use and merits of the site plan. He further stated he would encourage staff to finish their report and make a decision so they can acquire the land before it continues to rise in value.

**ANDY ABRAHAM**, 702 E. Osborn, Phoenix, AZ, applicant, presented an overview on the land use for this project. He stated what they are proposing is consistent with the

General Plan and it is consistent with the Cactus Corridor. He discussed the amended development standards. He reported in exchange for amended development standards they are offering significant amenities on the site plan. He further reported there would not be a negative impact on the existing traffic levels.

Mr. Abraham stated regarding the drainage issue they have been working closely with staff to figure out a way to allow his client to go forward yet preserve the opportunity for the city to do what it deems necessary to solve this issue. He remarked he felt they were on the same page working together.

**COMMISSIONER HEITEL** stated from a land use standpoint they might not need to come to them for amended development standards if they were not cramming this project so tightly. Mr. Abraham stated they did not feel like they were cramming this site because they are consistent or less dense than the surrounding neighborhoods.

**COMMISSIONER NELSEN** stated the applicant has unanimous support from the contiguous community. He inquired what were the specific reasons for support. Mr. Abraham stated there has been a history of concern about the current use and the neighbors have been frustrated with the current use. The neighbors were very encouraged about a development that is consistent with the residential. He further stated equestrian is no longer consistent with the balance of the neighborhood. Commissioner Nelsen stated he appreciates that, however, it is that kind of thinking that has eroded the equestrian lifestyle in the entire Cactus Corridor. He further stated it is one thing to build to the existing zoning. It is another thing to ask for four times the existing zoning. He remarked the justification for the amended development standards is to provide major community benefits. He inquired which community are they speaking of. This subdivision or the community at large. Larry Brandon stated their intention is to create an atmosphere within their community with architecture, open space, and park that will be self-contained within their community.

Commissioner Nelsen stated he is an advocate of the equestrian community. They have a General Plan that says this area is not appropriate for equestrian use and he will honor that but he does not agree with it. He reported they have had a record year for drought so how can they consider four times as many residents than what is currently zoned. He further reported they are having difficulty meeting the needs of the existing residents with regard to infrastructure. Granted this is a very small project but it is just a continuance of a process that has got us where we are today. He noted he felt the drainage issues needed to be answered. He further noted he would need a lot more information to support this.

**CHAIRMAN GULINO** stated with regard to the amended development standards, he inquired if the applicant would be comfortable with a 30-foot aggregate and essentially take a 15 foot front yard setback and a 15 foot rear setback. He requested the applicant think about that during public testimony.

(CHAIRMAN GULINO OPENED PUBLIC TESTIMONY.)

**JACQUELINE REICHMAN**, 12926 N. 95<sup>th</sup> Way, spoke in support of this project. She stated she is President of the Homeowners Association for Sweetwater Ranch Manner

II. She further stated the 61 homes in this community support this project. She remarked she has letters of support from residents in her community that was not able to attend. She read a letter from the President of the Master Association stating they are in agreement with the plans and support the zoning. She also read an e-mail from the President of Manner One Association who also supports this project. She reported they will all benefit from having luxury homes on this site.

(CHAIRMAN GULINO CLOSED PUBLIC TESTIMONY.)

**MR. ABRAHAM** stated with regard to the request to have a 30-foot aggregate for the front and rear yard setbacks that would request 35-foot aggregate to allow for some flexibility.

**COMMISSIONER NELSEN** commented the Commission has received a letter from Susan Wheeler and she makes some very bold statements about the usefulness of the trail. He also commented the letter states she attended a meeting with the developer who told the group that there was a horse buyer to buy the property as a threat to the neighbors. Mr. Brandon stated that is not a correct statement.

Commissioner Nelsen stated the letter indicates the size of the property is gross 10 acres. He further stated he believes it is less than 7 acres with the roads taken out and the wash. Mr. Brandon replied it is a gross 10-acre site. Commissioner Nelsen stated closer to 8.5 that is actually buildable. Mr. Brandon replied in the affirmative. Commissioner Nelsen stated he has concerns regarding what happens here sets a precedence for the next ranch that goes up for sale and how development occurs in the City of Scottsdale. He further stated Ms. Wheeler is very concerned about the trails in the Cactus Corridor. Mr. Meyers provided clarity on the future trails in this area. He stated they are working with the Transportation Department to work on a trail into the cross section with good buffering. Commissioner Nelsen stated he is concerned about the separation between the automobile traffic and the actual surface of the trail. He commented there are a lot of unanswered questions and they are being asked to approve this before they are answered. Mr. Meinhardt provided information regarding the potential buffers along Sweetwater and Cactus.

Commissioner Nelsen expressed his concern that they are going from a relatively low use on this property to quadrupling the existing density and how it will impact the traffic and the equestrian use in the neighborhoods around there. He stated he does not think people realize what kind of an impact this type of communities have on the existing equestrian community. He also expressed his concern regarding combining the equestrian use, which is traditional part of Scottsdale's heritage, with increased traffic. He remarked it has already been done in this area but his issue is that they are continuing to promote that. He discussed his concern regarding not having the appropriate infrastructure to support those areas that still have equestrian because they are eroding that lifestyle. He concluded he does not have all of the answers because it seems to hinge on the drainage issue as to how this subdivision will finally be platted.

**COMMISSIONER HENRY** stated she has a short little speech. This is called reality. If you read the newspaper in just the last couple of days it states farmlands in this area are being driven out because we are growing. There are thousands of people moving into

the Valley every year and we are building houses to house those people. What is happening is that the equestrian farms, the ranches, the farm land, and the orchards are being pushed out because the City is engulfing them so people are having to relocate. She further stated she is very sympathetic to the situation but it is what is happening in the whole country.

Commissioner Henry stated she drove out to this area because she was concerned because currently they have a ranch and now they are going to have houses. She further stated when she drove into this neighborhood the development that is being proposed fits in with what else is there. The ranch looks like it does not belong.

**VICE CHAIRMAN LOTZAR** stated from his vantagepoint he would agree with Commissioner Henry. He further stated he felt they should not hamstring the applicant because of the wash issue, which is more of a regional issue than this property. He further stated he felt the solution that has been fashioned is a good one. He added he appreciated the opportunity to serve the needs of the applicant and the surrounding community. He concluded he would be voting in favor of this request.

**COMMISSIONER HEITEL** stated he would not support this case. He further stated he does not think it is an issue of future drainage issues. He remarked he sees a transition in zoning toward the south to larger R1-18, R1-10 lots. The adjacent property owners are R1-7. He further remarked he would question the amended development standards especially the amended rear yard setbacks and what impact it will have on the adjacent property owners. He commented he felt the amended development standards just allows more density than a proper site plan would allow. Amendment of these kinds of development standards and certain density issues in a site plan provide meaningful open space or meaningful trails or other meaningful amenities to the community and that makes some sense to him. This kind of site plan does not make sense to him. He concluded he would not be supporting this case.

**COMMISSIONER OSTERMAN** stated he understands the concerns of the equestrian community as far as the shrinking of available equestrian areas. He further stated he can't believe by reserving this area right smack in the middle of such high density building that it would help in anyway to preserve the equestrian lifestyle. He remarked he did not believe that there was any better use for this property than to rezone it and to have the proposed density. It is a beautiful plan. It will add value to the City of Scottsdale and the surrounding properties. He concluded he would support this case.

**COMMISSIONER STEINBERG** stated he would like to echo what Commissioner Henry said. He further stated the proposed plan is more consistent with the land use in this area and will be a good addition to the area. He concluded he would support this project.

**CHAIRMAN GULINO** stated he would like for the maker of the motion to consider adding the stipulation requiring a 35-foot aggregate. What essentially that would do is take a 10 foot front yard leaving the rear setback at the unamended distance and vice versa.

Chairman Gulino stated he would agree that it is unfortunate that the Cactus Corridor has changed in the way that it has given some of the characteristics in the City of Scottsdale. This problem occurred a long time ago. This development is in character with the surrounding neighborhood. He reiterated he would be in favor of modification to the amended setbacks that would add an aggregate between the front and the rear yard of 35 feet.

Chairman Gulino stated with regard to the drainage issue he felt it would be unfair if the Commission, staff, or City Council impede or hamper with the property rights of the Applicant while they decide what to do regarding the drainage issue. He further stated he would encourage staff to take that into consideration on the phasing of this plan. He remarked if the phasing is a result of the discussions regarding the retention he felt that should be removed and the applicant should be able to move forward, as he desires. He further remarked he says that with the City's best interest at heart. He added he felt they are opening themselves up for a lot of liability and it is not playing fair.

**COMMISSIONER NELSEN** stated he has heard a lot of discussion regarding the fact that it is unfortunate this problem occurred in the past but that is no reason to increase the existing zoning. This property should be developed as R1-35. They would not be taking anything away from the property owner. He remarked he has heard a nice lecture from his partner here on his right and it is exactly that kind of thinking from other members on the Commission that has gotten Scottsdale and other communities in the Valley bitching about the same thing. It is bad planning. It should not have started and it has got to stop some place. When they have enough resources such as water, clean air, police, and fire protections then we can start saying bring on some more. He reiterated he would not be supporting this case.

**VICE CHAIRMAN LOTZAR MOVED TO APPROVE CASE 21-ZN-2002 TO THE CITY COUNCIL WITH A RECOMMENDATION FOR APPROVAL WITH AN AMENDMENT TO THE STIPULATION THAT THE AGGREGATE BETWEEN THE FRONT AND REAR YARD IS UP TO 35 FEET. SECOND BY COMMISSIONER STEINBERG.**

**THE MOTION PASSED BY A VOTE OF FIVE (5) TO TWO (2) WITH COMMISSIONER NELSEN AND COMMISSIONER HEITEL DISSENTING.**

3-TA-2000#2 (Wireless Communications Ordinance Text Amendment) request by City of Scottsdale, applicant/owner, to update Ordinance No. 455 (Zoning Ordinance) pertaining to Wireless Communications Facilities.

**MR. STABLEY** presented this case as per the project coordination packet. He stated on December 18, 2002, the Planning Commission approved the draft ordinance except for the outstanding items. The Planning Commission directed staff to provide additional information regarding the outstanding items. He stated they are not asking for a vote tonight they are just requesting the Commission provide them with direction on the outstanding issues and they will incorporate that direction into the ordinance and return on January 28<sup>th</sup> for a vote. Those outstanding items are summarized as follows:

- **Public Notification:** The proposed text amendment requires property owners within 300 feet be notified of all new wireless communications facilities. However, there are

differing opinions regarding notification of residents located further from the site and notification of other potentially affected citizens.

- **Radio Frequency (RF) Initial Compliance:** The Federal Communications Commission (FCC), not the City of Scottsdale, regulates RF emissions. There is disagreement regarding whether the city should verify if FCC RF regulations are met for new sites.
- **Radio Frequency (RF) Continual Monitoring:** There is disagreement regarding whether the City should be responsible for the continual monitoring of RF emissions, including the cumulative impact of multiple antennas.
- **Antennas Concealed within Flagpoles:** The proposed text amendment allows the use of flagpoles to conceal antennas within them. However, there is disagreement whether this type of facility is an inappropriate use of the US Flag and whether this type of facility violates flag protocol.
- **Indemnification:** There is disagreement whether the wireless companies should be required to indemnify the city of potential liability regarding radio frequency (RF) emissions.

(CHAIRMAN GULINO OPENED PUBLIC TESTIMONY.)

**GEORGE GNATOVICH**, 8711 E. Pinnacle Peak Pkwy, stated he sat on the wireless communications committee. He further stated the issue he has is regarding using flag poles and mono poles. He discussed his background in the wireless industry. He further noted he does not like the US Flag pole being used as camouflage or disguise. He further noted he contacted the National Flag Foundation and it was their opinion that if a US flag pole is being used for commercial gain one has to think twice about the purpose of displaying that flag. When displaying the national symbol their motives should be pure. In this instance, they did not feel the motive was pure and not appropriate for cellular companies to place a flag on a mono pole just to improve their service. He reported the industry discovered if they used the Arizona flag there is not a code, which only went to show that it was not a patriotic gesture it was just a method of getting a mono pole. He presented information on the mono pole and its dimensions. The size of a mono pole distracts from the beauty of the flag and they do not fly properly on mono poles.

Mr. Gnatovich requested that they delete the word flag and flagpole where ever it appears in the matrix thereby whatever is there is called a mono pole.

**ARTHUR MONES**, 15050 N. Thompson Peak Pkwy, reported he has been in the technology business including the telecommunications business for 35 years. He further reported he has empathy for the people on the other side but that does not include having them act irresponsibly. The objective is to have an ordinance that is optimum within the 1996 Telecommunications Act such that it protects the health of our residents to the extent possible. Notifies people and their children about the proximity of antennas. Provides indemnification, which affects everyone's financial interest. The staff draft ordinance does not do that. There are models they could have used Sunnyvale has a ordinance that has not been legally challenged and there are ordinances in the same category. It is not a coincidence that the wireless industry people are delighted with the staff ordinance because they were the majority of the wireless committee.

Mr. Mones stated concerning limitations there are two that are important. One provides reasonable discrimination among providers. Two stipulate RF emission exposure more stringent than the Telecommunications act does. He further stated there is no question that RF is a hazard. Every resident deserves as much protection as possible.

Mr. Mones stated he believes the structure and character of this two part meeting with a six day gap is not a public meeting and it is illegal to the spirit of open meetings and is contrary. He further stated he believes this is not an open meeting.

**OCTAVIO LAMAS**, 7145 E. 1<sup>st</sup> Street, thanked all of the members of the Ideas Team who have been dedicated to try and craft some kind of ordinance. He stated he takes exception with the comment that the Ideas Team was mainly made up of the wireless industry because that is not the case. There is a logical and reasonable middle ground and he would hope the Commission would not gravitate to either extreme. Although Qwest did not get everything they wanted they would support the draft ordinance. He remarked he felt keeping and maintaining the dignity of the flag is on everyone's mind. He further remarked he does not believe this particular deployment tarnishes this cherished symbol.

**CHAIRMAN GULINO** stated he is concerned about the hazards of the RF emissions. He inquired about the current state of information regarding whether they are hazardous.

**ERIC UNRUH**, 7145 E. 1<sup>st</sup> Street, stated he is a RF engineer for Qwest. He further stated he is not a medical expert on the affect of RF emissions on human bodies. The only thing he can say is that he refers to the guidelines the FCC has put forth. The wireless industry refers and abides by the restrictions set forth by the FCC.

**KEVIN SONODA** stated the World Health Organization as well as other organizations around the world has had studies ongoing about the RF in terms of antennas with cell sites as well as antennas for cell phones. At this point, there is no conclusive evidence of radiation damage or biological damage to humans based on cell sites as well as cell phones. It is inconclusive at this point.

**COMMISSIONER STEINBERG** inquired if future technology would increase the admittance of RF or will it decrease. Mr. Unruh replied it would decrease.

**COMMISSIONER NELSEN** stated he does not think they are discussing whether RF emissions are dangerous because the FCC has set guidelines regarding this issue. The issue before us is who monitors that and how often is it monitored.

**GEORGE TSIOLIS**, One Arizona Center, Phoenix, AZ, Snell & Wilmer, representing T-mobile and APS, stated they would support the December 13th draft as written although they believe it has problems with regard to preemption by federal law and some of its provisions.

**CHAIRMAN GULINO** stated Mr. Tsiolis reference to the December 13<sup>th</sup> draft means nothing to him. Mr. Stabley stated the draft before the Commission is the same draft from December 18<sup>th</sup>. Vice Chairman Lotzar stated that at the last meeting the

Commission approved the draft subject to the five outstanding issues so they are not discussing the prior draft only the five outstanding issues.

**MR. TSIOLIS** stated they would recommend there are not any additions to the ordinance that would result out of those five issues. He further stated the City should be careful it does not create a product that exposes them to litigation case by case siting application. He remarked the City of Scottsdale must adhere to the Telecommunications Act of 1996. He further remarked the local ordinances should not duplicate or exceed the FCC's rules.

**COMMISSIONER NELSEN** stated several other communities require monitoring or indemnification. He inquired if Mr. Tsiolis is saying these are illegal. Mr. Tsiolis replied in the affirmative. Commissioner Nelsen inquired why have they not been challenged by the wireless community. Mr. Tsiolis stated it is the beginning of a trend that was not picked up on until it was too late for those jurisdictions.

**COMMISSIONER HEITEL** asked a series of questions regarding what precludes the city from requiring monitoring on a periodic basis that they continue to comply with the FCC regulations. It would just be a notice to the City that overtime these facilities are still in compliance. Mr. Tsiolis replied the act expressly preempts local ordinances concerning environmental effects of RF emission. He noted the more the city gets involved in health issues the more they open themselves to litigation.

**COMMISSIONER NELSEN** inquired if Mr. Tsiolis was volunteering his time this evening. Mr. Tsiolis replied he is here this evening on behalf of his client.

Commissioner Nelsen inquired what is the city's position regarding requiring periodic monitoring not to exceed the FCC guidelines but just to make sure it is consistent. Ms. Bronski replied the devil is in the details on this issue. She stated the city could require submission of reports that are already being provided to the FCC. The City could do its own monitoring and checking if it wanted to but it does raise the point whether it would be practical. They would not be allowed to deny siting requests because of fears about the affects of RF emissions then they are getting dangerously close to violating the provisions in the Telecommunications act.

**LAURA ALTSCHUL**, 12920 SE 38<sup>th</sup> Street, Bellevue, WA, 85004, stated she is the National Director of Government Affairs for T-mobile USA. She further stated she has a personal interest in Scottsdale because her parents have lived here since 1984, her in laws live here and she visits here frequently so she does not want her parents to be living in a community where there is not a fair and reasonable wireless ordinance. She remarked Scottsdale has taken very good steps in reaching a fair and reasonable ordinance. She further remarked the issue of RF emission is very important to the industry and they have demonstrated nationally they have addressed this issue. She presented information regarding the importance of self-regulating. She reported they are far below the power levels than is recommended by the FCC. If something goes wrong with a site, it is immediately fixed.

Ms. Altschul reported this community has a very high demand for wireless service.

**CHAIRMAN GULINO** inquired if T-mobile was opposed to any type of monitoring report that would be required every two years. Ms. Altschul replied they are glad to submit anything that is required by the FCC to the city. Chairman Gulino inquired if the FCC requires anything after the facility goes up. Ms. Altschul replied they are only required to provide additional information if there is a co-location site. Chairman Gulino stated they are hearing all of these assurances that these sites are well below the limits but nobody is stepping up and offering to provide monitoring every two years to assure us they are in compliance. Ms. Altschul stated they have designed their sites and the emission that comes from those sites to clearly be within the law. They abide by the Federal law. They do not want to get into a situation where monitoring is required on a city by city basis. They do not see any reason for the city to add another level of monitoring.

**COMMISSIONER HEITEL** inquired how does the Federal Government deal with the issue of compliance once a facility is up. He also inquired if she is suggesting the Federal government does not care about the facility once it goes up. Ms. Altschul stated she felt the Federal government cares quite a bit. She further stated any citizen can bring a claim or petition before the FCC inquiring on any site within their community. Ms. Altschul reported they regularly monitor their sites to make sure the emissions stay within the power levels and emission stay within or the networks go haywire. They know exactly what is going on with the sites at all times. She added they object to the city adding another level of administrative burden. Commissioner Heitel stated the intent is when they put in a new facility that they continue to monitor it periodically to ensure that it stays in compliance. If they found a facility that was out of compliance, they would notify the City. Ms. Altschul stated the city does not have the right to insist on an extra level of monitoring.

**SUSAN BITTER SMITH**, 5806 E. Lewis, stated she served on the Wireless Ideas Team for close to three years. She further stated as they have heard the state and local governments can only address aesthetic when addressing siting issues. The role of the FCC is to address health and safety issues. She remarked she would advocate that they look at options that are within their purview. Asking for additional monitoring is not within their jurisdiction. She would suggest the City ask for a letter from the carrier on an annual basis that states all of the sites within their jurisdiction comply with the Federal regulations. She added she would encourage them to look at options provided by the Ideas Team.

**COMMISSIONER NELSEN** asked a series of questions regarding the FCC's jurisdiction to monitor. Ms. Bitter Smith provided a brief overview of the FCC's jurisdiction. Commissioner Nelsen stated the question is whether the city should request periodic monitoring at school and park site and other sensitive areas.

**KEVIN HOWELL**, 5239 N. 69<sup>th</sup> Place, representing Verizon Wireless. He stated he also sat of the Wireless Ideas Team. He further stated the only thing they disagree with would be the requirement to provide 300 foot notices on staff approvals. The rest of the ordinance they thing staff and the Ideas Team have done a good job on. He commented with the new technology the power levels have come down. He further commented these sites are monitored 24 hours a day, 365 days a year.

(CHAIRMAN GULINO CLOSED PUBLIC TESTIMONY.)

**VICE CHAIRMAN LOTZAR** suggested the Commission goes through each of the five outstanding issues and provides staff with direction regarding which option they prefer.

**CHAIRMAN GULINO** reiterated that the Commission would not be voting this week but rather just providing staff with direction that will be incorporated into the ordinance and return on January 28<sup>th</sup> for a vote.

**MR. STABLEY** reviewed the possible options for resolving the outstanding issue #1A.

**COMMISSIONER OSTERMAN** stated he would recommend no change with the addition that additional printed notice either in the newspaper or on the website.

**COMMISSIONER HEITEL** stated he would support draft Option A but with the requirement in R1-43 or greater the notification distance is changed to 750 feet.

**VICE CHAIRMAN LOTZAR** stated he would recommend they stay with what is currently in the ordinance.

**COMMISSIONER NELSEN** stated he would go with Option B with the exception that R1-43 and above goes to 750 feet.

**COMMISSIONER HENRY** stated she would like to go with Option A and include the information on the website.

**COMMISSIONER STEINBERG** stated he would go with Option B with the exception that R1-43 and above goes to 750 feet.

**CHAIRMAN GULINO** stated he would support draft Option A but with the requirement in R1-43 or greater the notification distance is changed to 750 feet.

**MR. STABLEY** inquired if that would apply to staff approvals. Chairman Gulino replied in the affirmative.

**MR. STABLEY** reviewed the possible options for resolving the outstanding issue #1A.

**COMMISSIONER NELSEN** stated he is leaning toward Option C particularly if this public notice could be included on the website and possibility even City Cable 11.

**COMMISSIONER HENRY** stated she would be in favor of Option C.

**COMMISSIONER STEINBERG** stated he would be in favor of Option C.

**COMMISSIONER OSTERMAN** stated he would support Option C with a map of the antenna sites on the website.

**COMMISSIONER HEITEL** stated he would support Option C with a map of the antenna sites on the website.

**VICE CHAIRMAN LOTZAR** stated he would support Option A.

**CHAIRMAN GULINO** stated he would support Option C with a map of the antenna sites on the website.

**MR. STABLEY** reviewed the possible options for resolving the outstanding issue #2.

**COMMISSIONER STEINBERG** stated he would endorse Option C.

**COMMISSIONER HENRY** stated based on everything she has heard tonight as far as monitoring it is not in their purview. She further stated she felt it would be reasonable for them to suggest the City ask for a letter from the carrier on an annual basis that states all of the sites within their jurisdiction comply with the Federal regulations.

**COMMISSIONER NELSEN** stated he tends to go with Option D without requiring an engineer to measure in the field.

**VICE CHAIRMAN LOTZAR** stated he would support Option A.

**MR. STABLEY** reviewed the possible options for resolving the outstanding issue #3.

**COMMISSIONER OSTERMAN** stated he would support Option B.

**VICE CHAIRMAN LOTZAR** stated he would support Option A because he would hate to see it go beyond their jurisdiction.

**COMMISSIONER NELSEN** stated he would support Option C.

**COMMISSIONER HENRY** stated she would support Option B

**COMMISSIONER STEINBERG** stated he would support Option B

**COMMISSIONER HEITEL** stated he would support Option B.

**CHAIRMAN GULINO** stated he would support Option A.

**MR. STABLEY** reviewed the possible options for resolving the outstanding issue #4.

**COMMISSIONER HEITEL** stated he would support Option B and change the word flag pole to mono pole.

**VICE CHAIRMAN LOTZAR** stated he would support Option A.

**COMMISSIONER STEINBERG** stated he would support Option B.

**COMMISSIONER HENRY** stated she would support Option B and change the words flag pole to mono poles.

**COMMISSIONER NELSEN** stated he would agree with Commissioner Henry.

**CHAIRMAN GULINO** stated he would support Option B.

**COMMISSIONER OSTERMAN** stated he could support Option A or Option B.

**MR. STABLEY** reviewed the possible options for resolving the outstanding issue #5.

**VICE CHAIRMAN LOTZAR** stated he could support Option A.

**COMMISSIONER NELSEN** stated he could support Option B.

**COMMISSIONER HENRY** stated she would support Option B.

**COMMISSIONER STEINBERG** stated he could support Option B.

**COMMISSIONER OSTERMAN** stated he could support Option A.

**COMMISSIONER HEITEL** stated he could support Option A.

**CHAIRMAN GULINO** stated he would support Option A.

**VICE CHAIRMAN LOTZAR MOVED TO CONTINUE CASE 3-TA-2002 TO THE JANUARY 28<sup>TH</sup> PLANNING COMMISSION MEETING. SECOND BY COMMISSION HEITEL.**

**THE MOTION PASSED BY A VOTE OF SEVEN (7) TO ZERO (0).**

**WRITTEN COMMUNICATION**

There was no written communication.

**ADJOURNMENT**

With no further business to discuss, the regular meeting of the Scottsdale Planning Commission was adjourned at 9:20 p.m.

Respectfully Submitted,

"For the Record " Court Reporters

**APPROVED**